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VIRGIN RECORDS AMERICA, INC.;
UMG RECORDINGS, INC.; SONY BMG
MUSIC ENTERTAINMENT; WARNER
BROS. RECORDS INC.; and BMG MUSIC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIRGIN RECORDS AMERICA, INC., a
California corporation; UMG RECORDINGS,
INC., a Delaware corporation; SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership; WARNER BROS.
RECORDS INC., a Delaware corporation; and
BMG MUSIC, a New York general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 5:07-CV-06032-JF

The Honorable Jeremy Fogel

***EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for March 28, 2008, at 10:30 a.m. to July 25, 2008. Plaintiffs further request, pursuant
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 90 days – until June 26, 2008 – to serve Defendant with the Summons and Complaint. As
5 further explained below, Plaintiffs believe they have discovered the identity of the Doe defendant in
6 this case, and additional time is needed to file a First Amended Complaint naming Defendant
7 personally and then to serve Defendant with process. In support of their request, Plaintiffs state as
8 follows:

9 1. The initial case management conference is currently scheduled for March 28, 2008, at
10 10:30 a.m.. The current deadline for service of process is March 28, 2008. No previous
11 continuances or extensions have been requested or granted in this case.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
13 Doe (“Defendant”) on November 29, 2007. Plaintiffs did not have sufficient identifying information
14 to name Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol
15 address assigned by Defendant’s Internet Service Provider (“ISP”). Accordingly, in order to
16 determine Defendant’s true name and identity, Plaintiffs filed their *Ex Parte* Application for Leave
17 to Take Immediate Discovery on November 29, 2007, requesting that the Court enter an Order
18 allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

19 3. The Court issued an Order for Leave to take Immediate Discovery on December 4,
20 2007, which was served upon the ISP along with a Rule 45 subpoena. On February 13, 2008, the
21 ISP responded to Plaintiffs’ subpoena, identifying Luis Carlos Esquivel-Garza.

22 4. Once a Doe defendant is identified, it is Plaintiffs’ practice to send a letter to the
23 defendant notifying him or her of Plaintiffs’ claims and inviting the Defendant to contact Plaintiffs
24 and attempt to amicably resolve the dispute. In this case, the ISP was unable to provide a current
25 U.S. address for Mr. Esquivel-Garza, who apparently is a resident of Mexico. Accordingly,
26 Plaintiffs sent their letter to Mr. Esquivel-Garza via electronic mail. To date, Plaintiffs have not
27 received a response.
28

1 5. Unless Plaintiffs are contacted by Mr. Esquivel-Garza and the matter is resolved,
 2 Plaintiffs now intend to file a First Amended Complaint naming Mr. Esquivel-Garza personally as
 3 the defendant, and commence with service of process. However, Plaintiffs are uncertain of
 4 Defendant's whereabouts, and are unable to effectuate service prior to the current service deadline.

5 6. Given the circumstances of this case, Plaintiffs respectfully request an additional 90
 6 days – until June 26, 2008 – to effectuate service. Plaintiffs further request that the case
 7 management conference be continued to July 25, 2008, or such other date as conveniences the Court.

8 7. Plaintiffs submit that their efforts to give written notice to Mr. Esquivel-Garza of their
 9 claim and attempt to resolve the case before naming him in the lawsuit constitute good cause for any
 10 delay in perfecting service. *See Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998)
 11 (stating good cause standard for service extensions). Moreover, unlike a traditional case in which
 12 the defendant is known by name and efforts to serve can begin immediately after filing the
 13 complaint, in this case Plaintiffs first had to obtain the identity of the defendant through the
 14 subpoena to the ISP. This Court has discretion to enlarge the time to serve even where there is no
 15 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

16 8. Because the copyright infringements here occurred in 2007, the three-year limitations
 17 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
 18 prejudice to the Defendant from any delay in serving the Complaint.

19 9. Plaintiffs will provide Defendant with a copy of this request and any Order
 20 concerning this request when service of process occurs.

21 Dated: March 17, 2008

HOLME ROBERTS & OWEN LLP

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 23 By: /s/ Matthew Franklin Jaksa
 24 MATTHEW FRANKLIN JAKSA
 25 Attorney for Plaintiffs
 26 VIRGIN RECORDS AMERICA, INC.;
 27 UMG RECORDINGS, INC.; SONY BMG
 28 MUSIC ENTERTAINMENT; WARNER
 BROS. RECORDS INC.; and BMG
 MUSIC

[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), that Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to June 26, 2008.

IT IS FURTHER ORDERED that the case management conference currently set for March 28, 2008, at 10:30 a.m. be continued to July 25, 2008.

Dated: 3/19/08

By:


Honorable Jeremy Fogel
United States District Judge